

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

In the Matter of the Search of

One AT&T/Motorola Mobile Cellular Telephone
Model Number C1681
Serial Number F42MHVGGVD
FCC ID Number IHDT56HY1

APPLICATION AND AFFIDAVIT
FOR SEARCH WARRANT

'08 MJ 1769

CASE NUMBER: _____

I Benjamin F. Morrow being duly sworn depose and say:

I am a Senior Patrol Agent with U.S. Customs and Border Protection/Border Patrol and have reason to believe that on the property or premises known as:

See Attachment A

in the SOUTHERN District of CALIFORNIA

there is now concealed a certain person or property, namely

Evidence of a crime, contraband, fruits of crime, or other items illegally possessed, property designed for use, intended for use, or used in committing a crime, as set forth more fully in Attachment B

which is

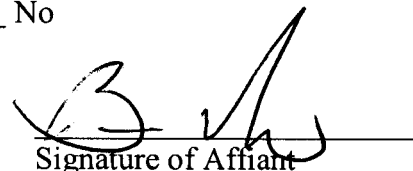
Property and electronic data that constitutes evidence of the commission of a criminal offense, and which is and has been used as the means for committing a criminal offense

concerning violations of Title 8, United States Code, Sections 1324(a)(1)(A)(ii) and 1324(a)(2)(B)(ii).

The facts to support a finding of Probable Cause are as follows:

See attached affidavit of U.S. Customs and Border Protection/Border Patrol Senior Agent Benjamin F. Morrow, which is attached and incorporated herein by reference

Continued on the attached sheets and made a part thereof. X Yes ___ No

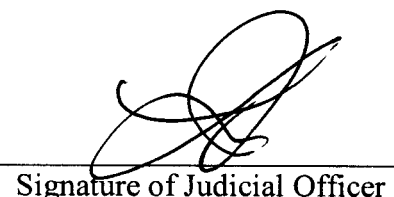

Signature of Affiant

Sworn to before me, and subscribed in my presence

June 5, 2008
Date

San Diego, California
City and State

The Honorable Leo S. Papas, U.S. Magistrate Judge
Name and Title of Judicial Officer


Signature of Judicial Officer

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IN THE MATTER OF THE SEARCH OF) Magistrate Case No.: _____
)
One AT&T/Motorola) AFFIDAVIT OF SENIOR
Model number C1681) PATROL AGENT
Serial number F42MHVGGVD) BENJAMIN F. MORROW
FCC ID number IHDT56HY1) IN SUPPORT OF SEARCH
_____) WARRANT APPLICATION

I, BENJAMIN F. MORROW, Senior Patrol Agent (SPA) with Customs and Border Protection/Border Patrol (CBP), having been duly sworn, depose and state as follows:

INTRODUCTION

1. I am a Senior Patrol Agent with the Department of Homeland Security, United States Customs and Border Protection, and have been so employed since April of 1997. I have worked for CBP for approximately ten years as an Agent. I have a Bachelor of Arts in Communication Studies from Texas Tech University. I am a graduate of the nineteen-week Border Patrol Academy at the Federal Law Enforcement Training Center. I have received training in identifying illegal alien load vehicles, scout vehicles, concealment techniques and the conduct of alien smuggling (Title 8) investigations. I have conducted numerous alien smuggling and control substance (Title 21) investigations.

2. Your affiant is currently assigned to the ECAT, East County Abatement Team, Case Development section, El Cajon, California. Your affiant is assigned to conduct investigations of criminal violations relating to the smuggling and transportation of illegal aliens. Your affiant has personally arrested or participated in the arrest of numerous persons for violations of the Immigration and Nationality Act. In each of these cases, your affiant has conducted interviews with the arrested persons and with their associates. Through these interviews, your affiant has gained a working knowledge and insight into the typical working of alien smuggling, traffickers and smugglers. Your affiant has also gained extensive information as to the normal operational habits of persons who make their living as alien smugglers.

3. Through the course of your affiant's duties, your affiant has worked experienced alien smuggling investigators about the activities of alien smugglers and your affiant has received on the job training dealing with the activities of alien smugglers practiced locally. Your affiant is aware that it is a common practice for alien smugglers to use cellular telephones, pagers and portable radios to maintain communications with co-conspirators to further their criminal activities. Your affiant has made numerous arrests for violations of Title 8 of the United States Code, and is familiar with the identification of types of alien load and scout vehicles by sight and description.

4. In preparing this affidavit, I have conferred with other ICE Special Agents and other Border Patrol Agents and opinions stated below are shared by them. Furthermore, I have personal knowledge of the following facts or have been told these facts by the persons mentioned herein.

5. This affidavit is submitted in support of an application to search a cellular telephone described as follows:

One AT&T/Motorola
Model number C1681
Serial number F42MHVGGVD
FCC ID number IHDT56HY1

for evidence of violations of Title 8, United States Code, Sections 1324(a)(1)(A)(ii) and 1324(a)(2)(B)(ii). These cellular telephones were seized from defendant Bernice PELAYO-Hernandez, Denise PELAYO-Hernandez, Ramon VASQUEZ-Cabrales and Ramon David GUERRA-Revalos at the time of their arrest on March 25, 2008. Two other cellular phones were found but not claimed in the front cab of the truck. I believe that probable cause exists to believe that evidence, fruits, and instrumentalities of violations of federal criminal law may be found in the above property, specifically in electronic form.

6. I have been personally involved in the investigation that is the subject of this affidavit and I am completely familiar with the facts outlined below. That knowledge comes from my personal participation in this investigation, including interviews with, and my

analysis of reports submitted by, other law-enforcement agents participating in this investigation.

STATEMENT OF PROBABLE CAUSE

7. On March 25, 2008, Supervisory Border Patrol Agent Diana Hill was assigned patrol duties in and around Boulevard, California. SBPA Hill was in full Border Patrol uniform and driving a marked DHS vehicle equipped with fully functional emergency lights and siren. Boulevard is located approximately five miles north of the United States/Mexico International Boundary approximately 20 miles east of the Tecate, California Port of Entry.

8. At approximately 9:57 p.m. while driving southbound on Ribbonwood Road in Boulevard, California, SBPA Hill observed a white F-150 Ford pick-up truck traveling northbound. A driver and one passenger were visible and the truck appeared to be heavily laden as it bounced excessively. Ribbonwood Road extends to the international border via Jewell Valley Road. This area is a well known trafficking corridor due to its easy access to the interstate. Agents have apprehended numerous alien and narcotics loads on Ribbonwood Road. The vehicle entered onto westbound Interstate 8 (I-8). SBPA Hill requested a stolen vehicle/registration check on the Ford's license plate number CA 4KO5334 via agency radio through KAK 820 dispatch. The dispatcher advised her that the vehicle was registered as a 1990 Ford with a release of liability to Felipe ROSAS, 3646 Van Dyke, San Diego, CA and had not been reported stolen. In her experience, illegal alien and drug smugglers commonly use vehicles with a release of liability in an attempt to hide the identity of the true owner of the vehicle. The vehicle did not reach the posted speed limit and was traveling slower than the flow of traffic. It has been her experience that overloaded vehicles are hard to control and bounce excessively in the same manner as the Ford F-150.

9. While continuing to follow the Ford pick-up westbound on I-8, SBPA Hill pulled alongside it and observed a silver lumpy tarp covering the bed of the truck. She also observed that the driver, later identified as Ramon VASQUEZ, Ramon, continued to look straight ahead in a nervous manner as she continued along side the Ford F-150. In her

experience, alien smugglers routinely use tarps to cover their human cargo and do not make eye contact with Agents traveling beside them. SBPA Hill notified the station via cell phone to contact the Pine Valley I-8 westbound checkpoint with the vehicle description. The Ford pick-up exited the interstate at Buckman Springs Road which is the last exit just prior to the Pine Valley checkpoint on I-8. VASQUEZ first turned on his right blinker and then his left. It has been her experience that smugglers will try to circumvent known checkpoints. VASQUEZ proceeded southbound on Buckman Springs Rd. hesitating prior to the stop sign and then coming to a complete stop at the sign. In her experience, smugglers become confused when they think that they are about to be caught and begin to drive erratically. An unmarked Boulevard Station Abatement Team vehicle driven by Agent William Western heard the radio traffic and joined SBPA Hill as she exited at Buckman Springs Rd. The Ford pick-up hesitated again and then continued southbound for approximately 150 yards, before turning into a driveway with a locked gate. SBPA Hill pulled in behind the vehicle and Agent Western pulled in next to it.

While the vehicle was stopped, SBPA Hill was able to see people moving under the tarp and several feet sticking out of the tarp wrapped with a wool material. Smugglers frequently wrap the feet of smuggled aliens to avoid detection and disguise their tracks from Border Patrol Agents. SBPA Hill immediately recognized this technique and further raised her suspicions regarding the vehicle.

10. Agent Western identified himself as a Border Patrol Agent and ordered the driver, VASQUEZ to turn off the motor. SBPA Hill went to the passenger side door to secure the passenger and observed one subject on the floorboard, and seven individuals under the tarp in the bed of the truck. The passenger was later identified as REYES-Rodriguez, Eduardo

11. An immigration inspection of all individuals was conducted, each subject freely admitted to being citizens and nationals of Mexico, present without any documentation that would allow them to enter or legally remain in the United States. Agents Western and SBPA Hill arrested all ten individuals, searched them incident to the arrest and transported them to the Boulevard Border Patrol Station for processing.

12. During the search of the truck and the aliens' person and possessions, four cellular telephones were discovered. A silver and black Motorola cell phone was found on VASQUEZ and two Samsung cell phones, one blue and one black, were found inside the cab of the truck within VASQUEZ's reach and a dark gray Motorola cell phone was found in the possession of smuggled alien Ramon David GUERRA-Revalos. A bag of cheese burgers from Jack N the Box were also found in the cab.

13. On March 25, 2008, Bernice PELAYO-Hernandez attempted to facilitate the transportation of illegal aliens from Campo/Boulevard, California area to points unknown in San Diego, California. While working primary inspection at the Border Patrol Checkpoint on Highway 94 in Jamul, California, Border Patrol Agent Adrian Pearson encountered a gold Dodge Intrepid with California license plate 4UXZ300 at approximately 11:00 p.m., containing two females. The driver, Bernice PELAYO-Hernandez and the passenger, Denise PELAYO-Hernandez, were both asked their citizenship. Both responded that they were United States Citizens. Bernice PELAYO-Hernandez was asked for identification. She could not produce any and was sent to secondary for further inspection.

14. While in secondary inspection, record checks were performed through Border Patrol Dispatch on both the occupants and the vehicle. Bernice stated that she had been in Tecate, Mexico and had recently crossed back into the United States. Record checks revealed that Bernice's car had not crossed into the United States during the last 72 hours. Upon further interviewing, Bernice stated that she was out here working as a scout for a friend. She stated that she and her sister Denise were to check the Golden Acorn Casino for Border Patrol Agents or Highway Patrol. Bernice was to then contact her friend via cell phone and tell him what she discovered. Bernice called her friend to tell him it was clear, but he did not pick up. She stated that she assumed that they had been caught.

15. Agent Pearson contacted several surrounding Border Patrol Stations and asked if any illegal alien load vehicles had been caught recently. The Boulevard Border Patrol Station stated that an alien load had been apprehended one hour prior driving southbound on Buckman Springs Road. Agent Pearson relayed the names and information of the above two

women. Your affiant has interviewed and charged both Bernice and Denise PELAYO-Hernandez in the recent past for alien smuggling and request that they and their car be held until transported to the Boulevard Border Patrol Station.

16. Your affiant questioned Bernice PELAYO-Hernandez as to her statements to Agent Pearson. Bernice stated she had been contacted by a man named "Eduardo" numerous times during the past week and asked if she would work as a scout driver. "Eduardo" was given her number by an alien smuggler named "Ramon" an alien smuggler she and her sister worked for in the past. "Eduardo" contacted Bernice via cell phone at approximately 2:00 p.m. on March 25, 2008 and asked for her location. Approximately thirty minutes later, a woman and man driving in a white Ford truck approached her and stated "Eduardo" sent them. They gave Bernice the registration and smog certificates for the truck. Bernice stated she would need the paperwork in the event the 94 checkpoint was open. When asked to explain, she stated that if the checkpoint were operational, the driver would park the truck and get out with the aliens in order to walk around the checkpoint. She or her sister would then drive the truck through the checkpoint and call "Eduardo" for further instructions. Bernice was instructed by "Eduardo" to buy twelve cheeseburgers, take them with her and drop them off at the pay phone at the Live Oaks Springs store. Bernice claims she did as instructed but didn't know who picked up the burgers.

17. During a search incident to arrest of property, Agent Timothy Wilson discovered a silver and black Motorola cellular phone in Bernice's purse. Also discovered in the purse was the smog certificate for the white Ford F-150 used to smuggle in this event and a receipt from Jack N the Box for twelve cheeseburgers, two jumbo jacks and a medium coke.

18. During a search incident to arrest of the property of Denise PELAYO-Hernandez, Agent Timothy Wilson discovered two cell phones, one gray Nokia and one black Motorola. Denise's purse also contained the California registration certificate for the white Ford F-150 used in this smuggling event.

19. On March 25, 2008, all cellular telephones mentioned herein were searched and seized as evidence by this affiant and are being maintained in the Boulevard Border Patrol

Station evidence storage room in Boulevard, California.

20. Based upon my experience and training, consultation with other law enforcement officers experienced in alien smuggling investigations, and all the facts and opinions set forth in this affidavit, I know that members of alien smuggling organizations communicate via cellular telephones in order to direct and monitor the transportation of aliens. I also know that telephone numbers, contact names, electronic mail (email) addresses, appointment dates, messages, pictures and other digital information are stored in the memory of cellular telephones which identify other persons involved in alien smuggling activities.

21. Based upon my experience and training, consultation with other law enforcement officers experienced in alien smuggling investigations, and all the facts and opinions set forth in this affidavit, I believe that Bernice PELAYO-Hernandez was involved with others, known and unknown to her, in an alien smuggling conspiracy and further believe that she used the cellular telephone described herein to further the goal of transporting illegal aliens to points known and unknown.

22. Based upon my experience and training, consultation with other law enforcement officers experienced in alien smuggling investigations, and all the facts and opinions set forth in this affidavit, I believe that telephone numbers, contact names, electronic mail (email) addresses, appointment dates, messages, pictures and other digital information are stored in the memory of the cellular telephone described herein.

CONCLUSION

23. Based on all of the facts and circumstances described above, I believe that probable cause exists to conclude that Bernice PELAYO-Hernandez, Denise PELAYO-Hernandez, Ramon VASQUEZ-Cabrales, and Ramon David GUERRA-Revalos used cellular telephones to facilitate the offense of transporting illegal aliens. These telephones were likely used to facilitate the offense and store data, which constitutes evidence, fruits, and instrumentalities of violations of Title 8, United States Code, Sections 1324(a)(1)(A)(ii) and 1324(a)(2)(B)(ii). It is common for individuals who are involved in alien smuggling


activities to keep alien smuggling related text messages, voicemail messages, photos, videos, and phone numbers in their cellular telephones for the acquisition and disposition of firearms and or narcotics for an indefinite period of time.

24. I also believe that probable cause exists to believe that evidence, fruits and instrumentalities of Bernice PELAYO-Hernandez, Denise PELAYO-Hernandez, Ramon VASQUEZ-Cabrales, and Ramon David GUERRA-Revalos illegal activity continue to exist on there cellular telephones.

25. Therefore, your affiant respectfully requests a warrant be issued authorizing your affiant, a Senior Agent with the United States Border Patrol, or a person specially trained in digital evidence recovery, to search the items described in Attachment A, and seize the items listed in Attachment B.

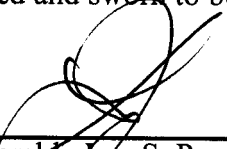
* * * * *

I declare under penalty and perjury that the foregoing is true and correct to the best of my knowledge.



BENJAMIN F. MORROW
Senior Patrol Agent
Customs and Border Protection/Border Patrol

Subscribed and sworn to before me this 5 th day of June, 2008



The Honorable Leo S. Papas
United States Magistrate Judge